IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

Bail Appl..No. 4471 of 2007()

CRIME NO.447 OF 2007 OF MANNARKKAD POLICE STATION

: PETITIONER/ACCUSED

SHAMEER, AGED 26 YEARS,
S/O MAMMAD, PAROKKOTTU HOUSE, AMBALAPPARA,
THIRUVIZHAKUNNU, MANNARKKAD TALUK, PALAKKAD DIST.

BY ADV. SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENTS: COMPLAINANT

STATE OF KERALA- REPRESENTED BY THE
SUB INSPECTOR OF POLICE, MANNARKKAD POLICE STATION
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4471 of 2007

Dated this the 25th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations for offences punishable, inter alia, under Section 452 I.P.C. All other offences alleged are bailable offences. The crux of the allegation is that the petitioner tried to approach a lady of the neighbouring house in the dead of the night. She resisted. She informed others. Infuriated by such conduct of the victim lady, the petitioner allegedly trespassed into the house of the victim and indecently assaulted her.

2. The learned counsel for the petitioner submits that the allegations are totally false. They are made with vexatious intent. The attempt of the victim is only to save herself of blame. The petitioner is not in any way involved in the alleged crime. Neighbours have not supported the case of the defacto complainant/victim. In these circumstances, directions under Section 438 Cr.P.C may be issued to save the petitioner from the undeserved trauma of arrest and detention.

3. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor opposes the application. The case diary has been placed before me. The learned Public Prosecutor submits

that there is no merit in the contention that neighbours have not supported the version of the defacto complainant. The learned Public Prosecutor submits that in any view of the matter this is not a fit case where the extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked.

4. Having considered all the circumstances in their totality, I am inclined to agree that there is merit in the opposition by the learned Public Prosecutor. Powers under Section 438 Cr.P.C are to be invoked sparingly and in exceptional cases that too in aid of justice. I find absolutely no features in this case which would justify deviation from the normal and ordinary rule that the accused must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail. More detailed reference to facts does not appear to be necessary.

5. In the result, this application for anticipatory bail is dismissed. Needless to say that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and then applies for regular bail in the ordinary course after giving prior notice to the Prosecutor, the learned Magistrate must proceed to consider and dispose of the application on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-